

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**VICKY S. CRAWFORD**

Claimant

VS.

**SCHLUMBERGERSEMA, INC., and  
CELLNET DATA SYSTEMS, INC.**

Respondents

AND

**ST. PAUL TRAVELERS INSURANCE COMPANY  
and KEMPER INSURANCE COMPANY**

Insurance Carriers

Docket No. 1,005,326

**ORDER**

Claimant and respondent SchlumbergerSema, Inc., and its insurance carrier St. Paul Travelers Insurance Company appeal the August 12, 2005 Award of Administrative Law Judge Kenneth J. Hursh. Claimant was awarded a permanent partial impairment to the body as a whole of 14 percent pursuant to the Award of the Administrative Law Judge for injuries suffered to claimant's bilateral upper extremities while working for respondent. Respondent CellNet Data Systems, Inc., and its insurance carrier Kemper Insurance Company were ordered to pay all authorized medical expenses related to the treatment of claimant's injuries, with respondent SchlumbergerSema, Inc., and its insurance carrier St. Paul Travelers Insurance Company being ordered to pay claimant his permanent partial disability benefits. The dispute between the insurance carriers regarding medical benefits and temporary total disability benefits was not determined, as the Administrative Law Judge held that he did not have enough information to make that determination. The Appeals Board heard oral argument on December 13, 2005.

**APPEARANCES**

Claimant appeared by her attorney, Douglas R. Sell of Olathe, Kansas. Respondent SchlumbergerSema, Inc., and its insurance carrier St. Paul Travelers Insurance Company appeared by their attorney, Samantha N. Benjamin of Kansas City, Kansas. Respondent

CellNet Data Systems, Inc., and its insurance carrier Kemper Insurance Company appeared by their attorney, Michelle D. Haskins of Kansas City, Missouri.

### **RECORD AND STIPULATIONS**

The Appeals Board (Board) has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge (ALJ).

### **ISSUES**

1. Does the Kansas Workers Compensation Division have jurisdiction over SchlumbergerSema, Inc., and its insurance carrier St. Paul Travelers Insurance Company for injuries which occurred in Missouri and for which they contend no Kansas contract existed between claimant and respondent SchlumbergerSema, Inc.?
2. What is the appropriate date of accident?
3. What is the nature and extent of claimant's injury?

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Board finds as follows:

Claimant began as a working supervisor for CellNet Data Systems, Inc. (hereinafter CellNet) in October 1996. Claimant began having hand and arm difficulties in 1997 and was eventually referred to Bradley W. Storm, M.D., board certified plastic surgeon, for treatment of the problems with claimant's right upper extremity. On March 30, 1999, Dr. Storm performed surgery on claimant, removing a ganglion cyst from claimant's right wrist. He determined claimant was at maximum medical improvement for the ganglion cyst on August 9, 1999, and assessed claimant a 2 percent impairment at the level of the wrist pursuant to the fourth edition of the *AMA Guides*.<sup>1</sup> He did not feel claimant needed permanent physical restrictions as the result of that surgery and released claimant to return to full duty. Claimant returned to her employment with respondent CellNet and continued performing her regular duties.

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<sup>1</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

By March of 2000, claimant was again experiencing difficulties and was again referred to Dr. Storm for an examination on March 6, 2000. At that time, claimant was having numbness and tingling in her fingertips, with pain in her upper arm and shoulder on her right side. Dr. Storm felt that this was a different problem than had been previously treated. An EMG performed on March 23, 2000, confirmed claimant had moderate right cubital tunnel syndrome and mild left cubital tunnel syndrome.

On February 20, 2001, Dr. Storm performed a right cubital tunnel release with subcutaneous transfer. He found claimant to be at maximum medical improvement on July 12, 2001, and rated and released her, finding claimant had a 5 percent impairment to the right upper extremity at the level of the elbow. There was some discussion about claimant having treatment for her left upper extremity. However, for reasons unclear in this record, that treatment was never completed. Part of the problem originated from the fact that CellNet, the corporation, was sold to SchlumbergerSema, Inc. (hereinafter Schlumberger) effective March 1, 2000. It is disputed whether that sale was an actual corporate purchase of the rights and liabilities of another corporation and whether claimant went to work for Schlumberger as a new hire, or whether claimant simply continued in her same capacity performing her same duties but with Schlumberger now being claimant's employer.

In the Award, the ALJ discusses the March 1, 2002 purchase of CellNet by Schlumberger, which misstates the purchase date by two years, as the actual purchase occurred March 1, 2000. The ALJ also notes that the stay bonuses paid to claimant were apparently an incentive to keep employees on the job, although it was known that the business would be closing down in the near future. This also misstates the nature of some of the stay bonuses. It was not understood in March of 2000 that Schlumberger would be closing. The stay bonuses discussed by the ALJ were paid in 2002, at which time the closing of the plant, which occurred on July 3, 2002, was imminent. The ALJ held that the stay bonuses did not amount to separate employment agreements.

However, the evidence in this record leads the Board to a different conclusion. At the time of the sale, an Asset Purchase Agreement<sup>2</sup> was completed between CellNet and Schlumberger, discussing the particulars of the sale of the company. It was made clear in the Agreement that Schlumberger was under no obligation to retain any of the employees of CellNet. In fact, on February 29, 2000, a letter from Schlumberger's personnel director, Joe Breeding, was provided to claimant, discussing possible employment between claimant and Schlumberger. Claimant was advised in that letter that she would be receiving an employment packet from Schlumberger which would contain various forms claimant needed to complete and information regarding employment with

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<sup>2</sup> Bailey Depo., Resp. Ex. 1.

Schlumberger. Claimant also acknowledged that when ownership changed from CellNet to Schlumberger, the benefits, in particular claimant's health insurance and 401(k) plans, improved over that which she was receiving with CellNet. Claimant continued performing her job duties for Schlumberger until the plant closed on July 3, 2002. On May 16, 2000, the workers compensation insurance coverage provided by Kemper Insurance Company (hereinafter Kemper) ceased, with St. Paul Travelers Insurance Company (hereinafter St. Paul Travelers) beginning coverage thereafter.

After the plant closed, claimant became employed full time with Skin Illustrations tattoo shop, where she had worked for several months, part time, before the closing of respondent's plant. She began full-time work at the tattoo shop after respondent's plant closed. Claimant's employment with Skin Illustrations terminated in December of 2003 due to a lack of business. After several months of unemployment, she then found another job as a renovation manager at Chapin Properties, where claimant was working at the time of the regular hearing, making \$12.50 an hour and working full time.

The location of the creation of claimant's contract of employment with Schlumberger and Kansas jurisdiction over claimant's accident with Schlumberger are disputed. When claimant first went to work for CellNet, she did so based upon an offer received by her at her home in Olathe, Kansas. Claimant received both a letter to her home offering her the position and a phone call at her previous employment in Kansas. Claimant called CellNet back while she was still in Kansas and accepted the offer of employment. Thus, there was a Kansas contract of hire and Kansas has jurisdiction over claimant's accidents while employed by CellNet.

The relationship with Schlumberger was different. Claimant was presented the letter regarding the potential employment with Schlumberger while claimant was at its plant in Missouri. The parties acknowledged that Schlumberger's place of employment was in Missouri and claimant, at all times, performed her job duties for Schlumberger in Missouri. Claimant argues that the continuation of employment was merely that, a changing of the guard so to speak, with no modification in claimant's job duties and no modification or change in the relationship between claimant and her employer. Respondent Schlumberger, however, argues that claimant's employment with CellNet was terminated and claimant was re-hired by Schlumberger in Missouri, with all aspects of the hire occurring in Missouri. Schlumberger also argues the contractual relationship between claimant and Schlumberger differed from claimant's relationship with CellNet, for example claimant's fringe benefits were better at Schlumberger.

The Kansas Workers Compensation Act applies to injuries sustained outside the state of Kansas where (1) the principal place of employment is within the state; or (2) the

contact of employment was made within the state, unless such contract specifies otherwise.<sup>3</sup>

In this instance, the record is clear that the principal place of employment with Schlumberger was not in the state of Kansas and the injury to claimant did not occur in the state of Kansas. Therefore, the Board must look to the contracts of employment made between claimant and CellNet, and whether a new employment contract was made between claimant and Schlumberger.

The basic principle of law is that a contact is “made” when and where the last act necessary for its formation is done.<sup>4</sup> When that act is the acceptance of an offer during a telephone conversation, the contact is “made” where the acceptor speaks his or her acceptance.<sup>5</sup> In this instance, the acceptance of an offer of employment from claimant to CellNet occurred while claimant was in Kansas. Therefore, with regard to any injuries suffered by claimant while employed for CellNet, the Kansas Workers Compensation Division would have jurisdiction under K.S.A. 44-506. However, the Board, in considering the evidence in this file, does not accept claimant’s argument that the relationship between claimant and her employer did not change with the purchase of the corporation by Schlumberger. It is clear from the Asset Purchase Agreement<sup>6</sup> that Schlumberger was under no obligation to retain any employees of CellNet. It is also obvious from the records attached to the regular hearing that claimant was made a new specific job offer with a retention bonus offered, as well as improvements in her health insurance and 401(k) package if she agreed to remain as a Schlumberger employee. That offer of employment and the acceptance by claimant appeared to occur while claimant was in Missouri at Schlumberger’s facility. There was no telephone contact or contact through the U. S. Mail for this offer and acceptance of employment.

The Board finds that claimant’s acceptance of employment with Schlumberger was a new contract of employment occurring in the state of Missouri, over which the Kansas Workers Compensation Division has no jurisdiction. Here, where claimant’s alleged injuries occur over a period of time through a series of accidents, the law in the state of Kansas is clear with regard to the date of accident to be utilized in determining liability for injuries occurring over a period of time. As claimant continued performing her regular duties through July 3, 2002, under Kansas law, that would constitute the date of accident

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<sup>3</sup> K.S.A. 44-506 (Furse 1993).

<sup>4</sup> *Smith v. McBride & Dehmer Construction Co.*, 216 Kan. 76, 530 P.2d 1222 (1975).

<sup>5</sup> *Morrison v. Hurst Drilling Co.*, 212 Kan. 706, 512 P.2d 438 (1973).

<sup>6</sup> Bailey Depo., Resp. Ex. 1.

for purposes of claimant's series of accidental injuries to her bilateral upper extremities.<sup>7</sup> This date extends far past the date claimant began her employment with Schlumberger. The Board finds that for the injuries suffered while employed with Schlumberger, neither the ALJ nor the Board has jurisdiction as claimant's injuries would come within the jurisdiction of the Missouri workers compensation system.

The Board, however, does have jurisdiction over injuries suffered while claimant was employed with CellNet. The Board notes that Dr. Storm, as claimant's treating physician, treated and operated on the ganglion cyst on claimant's right wrist. For that, he assessed claimant a 2 percent impairment to the upper extremity at the level of wrist pursuant to the fourth edition of the *AMA Guides*.<sup>8</sup> At oral argument, the attorney for CellNet acknowledged a responsibility for any care and treatment provided to claimant while CellNet was claimant's employer. The Board, therefore, finds that through February 29, 2000, CellNet and its insurance carrier Kemper are responsible for any and all medical care associated with the treatment of claimant's right upper extremity and for any and all medical care provided to claimant by Dr. Storm for those conditions. Additionally, the Board finds claimant has suffered a 2 percent impairment to the right upper extremity at the level of the wrist for the injuries suffered while employed with CellNet.

The Board acknowledges the medical opinions contained in the record from board certified orthopedic surgeon Truett L. Swaim, M.D. However, as Dr. Swaim did not examine claimant until July 21, 2003, over three years after the date that claimant began her employment with Schlumberger and over a year after the plant closed, the Board gives Dr. Swaim's opinion little weight.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Kenneth J. Hursh dated August 12, 2005, should be, and is hereby, modified, and the claimant, Vicky S. Crawford, is granted an award against the respondent, CellNet Data Systems, Inc., and its insurance carrier, Kemper Insurance Company, for an injury occurring through February 29, 2000, and based upon an average weekly wage of \$1,394.40, for a 2 percent impairment to the right upper extremity at the level of the wrist.

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<sup>7</sup> *Berry v. Boeing Military Airplanes*, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994); *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999); *Kimbrough v. University of Kansas Med. Center*, 276 Kan. 853, 79 P.3d 1289 (2003).

<sup>8</sup> *AMA Guides* (4th ed.).

Claimant is entitled to 4 weeks of permanent partial general disability compensation at the rate of \$383 per week totaling \$1,532.

CellNet and its insurance carrier are further ordered to pay all authorized medical expenses related to the treatment of claimant's injuries, subject to the Kansas Workers Compensation schedule of maximum fees,<sup>9</sup> as noted in the Award of the Administrative Law Judge totaling \$11,175.98.

With regard to any award against SchlumbergerSema, Inc., and its insurance carrier, St. Paul Travelers Insurance Company, the Award of the Administrative Law Judge is reversed and claimant is denied an award under the Kansas Workers Compensation Act, as claimant has failed to prove that she entered into a contract of employment with SchlumbergerSema, Inc., over which the Kansas Workers Compensation Act would allow jurisdiction. As noted above, this matter should be properly litigated under the workers compensation laws of the state of Missouri.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings and conclusions contained herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January, 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Douglas R. Sell, Attorney for Claimant  
Samantha N. Benjamin, Attorney for Respondent Schlumberger and its Insurance  
Carrier St. Paul Travelers  
Michelle D. Haskins, Attorney for Respondent CellNet and its Insurance Carrier  
Kemper  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>9</sup> K.S.A. 44-510i(c).